Le Club, Inc. *and* Local 100, Hotel Employees and Restaurant Employees International Union, AFL–CIO. Case 2–CA–29433

October 15, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND BRAME

Upon a charge filed by the Union on May 30, 1996, the General Counsel of the National Labor Relations Board issued a complaint on April 30, 1999, against Le Club, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On September 13, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On September 15, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated May 18, 1999, notified the Respondent that unless an answer were received by June 1, 1999, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in New York, New York, has been engaged in the business of operating a private club and restaurant. During the calendar year preceding the issuance of the complaint, the Respondent, in the course and conduct of its business, derived gross revenues in excess of $500,000 and purchased and received goods valued in excess of $5000 directly from suppliers located outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent, the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All dining room, kitchen and bar employees employed by the Employer, excluding all other employees, professional employees, supervisors and guards as defined in the Act.

Since about November 1, 1990, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since that time the Union has been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from November 1, 1993, to October 31, 1995.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

The parties' 1993–1995 collective-bargaining agreement requires that the Respondent make contributions to the Hotel Employees and Restaurant Employees International Union Welfare (and pension) Funds for the purpose of providing health and welfare (and pension) benefits, under the Hotel Employees and Restaurant Employees International Union Welfare (and pension) Plans or such new merged or consolidated plan as may be adopted by the trustees. From on or about January 1, until about June 1, 1996, the Respondent failed and refused to make contributions to the Union's insurance trust fund and the Union's pension fund on behalf of the unit employees as required by the provisions of the 1993–1995 collective-bargaining agreement.

These subjects relate to wages, hours, and other terms and conditions of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused and is failing and refusing to bargain collectively with the representative of its employees, and has thereby engaged in unfair labor prac-

tices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) of the Act by failing and refusing, since on or about January 1, and until about June 1, 1996, to make contributions to the Union's insurance trust fund and the Union's pension fund on behalf of the unit as required by the provisions of the 1993–1995 collective-bargaining agreement, we shall order the Respondent to make whole its unit employees by making all contractually required contributions to the Union's insurance trust fund and the Union's pension fund, including any additional amounts applicable to such delinquent payments as determined pursuant to *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[1]

ORDER

The National Labor Relations Board orders that the Respondent, Le Club, Inc., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing, since on or about January 1, until about June 1, 1996, to make contributions to the Union's insurance trust fund and the Union's pension fund on behalf of the unit as required by the provisions of the 1993–1995 collective-bargaining agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2 Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make the contractually required contributions to the Union's insurance trust fund and the Union's pension fund on behalf of the unit as required by the provisions of the 1993–1995 collective-bargaining agreement that were not made from about January 1, until about June 1, 1996, as set forth in the remedy section of this decision.

(b) Make whole the unit employees for any loss of benefits or expenses ensuing from its failure to make the contractually required contributions to the funds from about January 1, until about June 1, 1996, as set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in New York, New York, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 1, 1996.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 15, 1999

John C. Truesdale	Chairman
Sarah M. Fox,	Member
J. Robert Brame III,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the respondent otherwise owes the fund.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to make contractually required contributions to the Union's insurance trust fund and the Union's pension fund on behalf of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make the contractually required contributions to the Union's insurance trust fund and the Union's pension fund on behalf of our unit employees that were not made from about January 1, until about June 1, 1996.

WE WILL make our unit employees whole for any loss of benefits or expenses ensuing from our failure, from about January 1, until about June 1, 1996, to make the contractually required contributions to the funds, pursuant to our 1993–1995 agreement with the Union, with interest.

LE CLUB, INC.